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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 97-181
Defining Primary Lines	)	

To: The Commission

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

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October 9, 1997

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Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits these reply comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-referenced proceeding.[1/] These reply comments address the Commission's privacy inquiry in paragraph 16 of the *Notice*. As shown in Cox's initial comments the Commission should treat primary line designations as subscriber list information and should not adopt the disclosure restrictions suggested in the *Notice*.[2/]

I. Argument

In response to the issues of consumer privacy raised in this proceeding, as well as those raised in the Commission's ongoing *Customer Proprietary Network Information Proceeding*,[3/] the Commission must strike a balance between the need for customer protection

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[1/] Defining Primary Lines, *Notice of Proposed Rulemaking*, CC Dkt. No. 97-181, rel. Sep. 4, 1997 (the "*Notice*").

[2/] Notice at ¶ 16 (suggesting that "we should require ILECs that collect this information to use this information only for the purposes of determining the correct SLC and PICC for individual consumers' lines, and not disclose it or permit access to it for any other purposes").

[3/] *See* Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, *Notice of Proposed Rulemaking*, FCC 96-221, CC Docket No. 96-115 (rel. May 17, 1996).

against the disclosure of private information and the equally important need to safeguard the development of competition. As Cox recently noted, the "legislative history of the [consumer proprietary network information] CPNI provisions confirms that Congress intended to strike a balance in crafting limitations on CPNI use that would protect privacy interests and promote competition."[4/]

To achieve this imperative balance between consumer protection and the advancement of competition, the Commission should recognize three distinct categories of customer information subject to different levels of privacy protection. These categories are: (1) information which raises relatively few privacy and competitive concerns, and carries with it no expectation of privacy, *e.g*, subscriber list information; (2) information which raises some competitive and privacy concerns, *e.g.*, data regarding the services purchased by a customer; and (3) information which should be subject to the most safeguards and consists of highly sensitive information, *e.g.*, specific consumer call information. By implementing these categories, each subject to varying degrees of protection, the Commission will enhance competition through the free flow of non-sensitive information, while protecting consumers from having their private, sensitive information revealed.

Designations of primary lines fall within the least restricted category of customer-related information and should be treated as subscriber list information. Under section 222, "subscriber list information" includes "any information . . . identifying the listed names of subscribers or a carrier and such subscriber's telephone numbers, addresses or primary advertising classifications . . . or any combination of such listed names, numbers, addresses

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[4/] *See* Cox Reply Comments, CC Docket No. 96-115, filed March 27, 1997.

or classifications."[5/] Subscriber list information, therefore, is the most basic information regarding telephone service. It follows naturally, then, that primary line designation data would fall within that definition, since it is not possible to have telephone service without having a primary line.[6/] Thus, the Commission should not adopt the disclosure restrictions suggested in paragraph 16 of the *Notice*, but rather should classify primary line designations as subscriber list information.

Several other parties support Cox's view that the Commission should not impose the disclosure restrictions suggested in the *Notice*. BellSouth notes, for example, that the "information that would be provided by the consumer would not fall within the definition of CPNI."[7/] Similarly, GTE concludes that the "statutory restriction is . . . far less burdensome than the unfortunate paragraph 16 tentative conclusion, which would narrowly restrict what a carrier may do with its own data obtained from its own customer in the course of business."[8/]

Although the *Notice* tentatively concludes that primary line designation information should be made available only "for the purposes of determining the correct SLC and PICC for individual consumers' lines," there simply is no basis for such a conclusion.[9/] In fact, "[t]here is no attempt whatever in paragraph 16 to suggest why such a startling and sweeping

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[5/] 47 U.S.C. § 222(f)(3)(A).

[6/] Indeed, as the Commission tentatively concludes in its *Notice*, "this information should be collected from all customers currently being served by price cap ILECs." Notice at ¶ 10. Whether or not the Commission adopts any of the specific data collection proposals in the *Notice*, every customer will have a primary line.

[7/] Comments of BellSouth at 10.

[8/] Comments of GTE at 22.

[9/] *Notice* at ¶ 16.

restriction on a carrier's use of its own data needs to be imposed."[10/] Indeed, the parties that support the Commission's proposal and the proposition that primary line designations must be considered CPNI provide no substantive justifications for the suggested disclosure restrictions.[11/]

Bell Atlantic, for example states that "[primary line] designations will be a part of customer records and clearly must address 'the quantity, technical configuration,' and 'type' of service used by a customer."[12/] Bell Atlantic does not, however, explain why a primary line designation provides information on any of these subjects. Designation of a line as primary does not provide information regarding the number of lines subscribed to by the customer, the technical configurations of the line designated, or the type of service being provided. In fact, information pertaining to the designation of primary lines reveals just that, *i.e.*, whether a particular line served by a carrier is the first or "primary" line, and nothing more.[13/]

The Commission also should reject the position take by the Rural Telephone Coalition ("RTC"), which concludes that "[n]o matter what the level of aggregation, any data collected to

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[10/] Comments of GTE at 22. GTE further states that "the paragraph 16 tentative conclusion is not supported by any rationale; conflicts with the regulatory thrust of present Commission policy implementing the 1996 Act; would impose severe and unnecessary restrictions on the flow of a carrier's own information in derogation of the carrier's working relationship with its own customers and would go far beyond, and conflict with, the compromises embodied in section 222." *Id.* at 23.

[11/] *See* Comments of MCI at 7; Comments of US WEST at 9.

[12/] Comments of Bell Atlantic at 11; *see also* Comments of US WEST at 9.

[13/] In practice, the primary line designation actually reveals less about the quantity and type of service than other directory information. For instance, a listing of names and telephone numbers will show the number of lines used by each subscriber, but a primary line listing will show only one line per subscriber, no matter how many lines the subscriber has.

enforce tariffs written under the proposed rules must be restricted to that purpose."[14] RTC merely asserts this conclusion as if it is self-evident, but in fact the opposite is true. There is absolutely no basis for permitting carriers to conceal primary line designation data, which is vitally important to the proper administration of the universal service fund and the new access charge regime. Indeed, if this information is not readily available, it will be difficult to detect incumbent LEC efforts to evade the Commission's rules.[15] Thus, this information must be made available to ensure that access charges and universal service payments are not improperly assessed and to give competing carriers the tools to help the Commission enforce its rules.

Finally, several commenters suggest that the most significant privacy concerns in this proceeding center on "intrusive information gathering into the private living arrangements of . . . customers."[16] These privacy concerns are not implicated by the mere designation of primary lines, but only by particular methods of obtaining that information. As indicated above, designation of a line as primary or non-primary does not require divulgence of any "personal" information, but rather encompasses only that information pertaining to whether a particular line served by a carrier is the first or "primary" line. Cox does agree, however, that the Commission

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[14] Comments of RTC at 9.

[15] There are many ways in which an incumbent LEC could attempt to evade the rules that govern SLCs and PICCs for non-primary lines. For example, a customer with multiple lines served by an ILEC might decide to switch its primary service to a competing LEC, while keeping one line with the ILEC to obtain route diversity. Without the disclosure of the customer's primary line designation, it would be possible for the ILEC to change the designation of the lone remaining line to a primary line, *i.e.*, a line with a lower SLC, without the change being discovered.

[16] Comments of Bell Atlantic at 3. *See also* Comments of RTC at 9; Comments of Sprint 8-9.

should adopt rules that minimize or eliminate inquiries into consumers' living arrangements and family relationships. Such inquiries are completely unnecessary for the purpose of primary line designation and would raise significant privacy concerns.

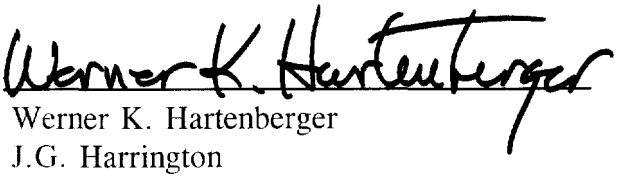
II. Conclusion

In light of the facts presented by Cox and the other parties to this proceeding, it is apparent that primary line designations should be treated as subscriber list information, and the Commission should not impose the disclosure restrictions suggested in the *Notice*. Cox urges the Commission to adopt this approach.

For all these reasons, Cox Communications. Inc. respectfully requests that the Commission adopt rules in this proceeding in accordance with its comments and these reply comments.

Respectfully submitted,

COX COMMUNICATIONS, INC.

By 

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October 9, 1997

CERTIFICATE OF SERVICE

I, Ruby Brown, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 9th day of October, 1997, the foregoing "Reply Comments" were served via first class mail (except where hand delivery is noted by an asterik *) to the following:

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